IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTIETH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.975 of 2003

Between:

Smt.Chandrakala, W/o.Jangaiah.

...PETITIONER

AND

1. The commissioner, Khapra Municipality, Village Khapra, Rangareddy District.

2. K.Sitalakshmi, W/o.Ramachandra Rao, 38 yrs, r/o.Chacha Nehrunagar, Secunderabad.

(Respondent No.2 is impleaded as per Court Order in W.P.M.P.No.15536 of 2003 dated 01.08.2003)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, direction or order more particularly in the nature of Writ of Mandamus declaring the action of respondent in proposing to demolish p.r.1-13/7/13, Village Khapra, Rangareddy District as being illegal, arbitrary and violative of Article 14 and 21 of the Constitution of India, pending disposal of appeal before the Council under Section 346 of the A.P.Municipalities Act, 1965 and pending disposal of Writ Petition, and to direct the respondent to stay all further proceedings pursuant to confirmation order dated 26.12.2002 in file CO.NOG/VIC/MCK, 25-1U/02/03.

Counsel for the Petitioner: MR.VIJAY ASHRIT

For the Respondent No.1: MR.T.S.VENKATARAMANA, STANDING COUNSEL

Counsel for the Respondent No.2: MR.A.V.SESHASAI

The Court made the following:

ORDER:

Though the Interlocutory Applications being W.P.M.Ps and W.V.M.Ps are listed, as the controversy lies in a narrow compass, the Writ Petition itself is being disposed of at the interlocutory stage.

The petitioner claims to be the owner of a small piece of land in Kapra Municipality. Earlier she constructed a ground floor building. So as to raise first and second floors, she allegedly applied for permission under Section 209 of the A.P.Municipalities Act, 1965 ('the Act' for brevity). However, the first respondent did not pass any orders. Therefore, taking advantage of the provisions of Section 214 of the Act, deeming provision, the petitioner commenced construction. In the meanwhile, the first respondent passed an order under Section 228 (1) of the Act calling upon the petitioner to remove unauthorized constructions. The petitioner submitted explanations. It is alleged that the first respondent did not consider the representation and on the contrary, served an order under Section 228 (3) of the Act allegedly antedating the order. Assailing the same, the petitioner filed a Writ Petition being W.P.No.2583 of 2002. At that stage, in view of the fact, final order was passed confirming the provisional order, this Court disposed of the Writ Petition giving liberty to the petitioner to file an appeal under Section 345 of the Act.

Accordingly, the petitioner filed an appeal before the Municipal Council at Kapra and it is still pending. In the meanwhile, it is alleged that attempts are being made to demolish the structure and apprehending the coercive action, the petitioner filed the present Writ Petition. This Court while admitting the Writ Petition on 17.01.2003 passed interim orders directing the stay of demolition. One K.Sita Lakshmi, W/o.Ramachandra Rao claiming to be the owner of the property, filed W.P.M.P.No.15536 of 2003 seeking impleadment in the matter. This Court passed orders on 01.08.2003, impleading the said K.Sita Lakshmi as respondent No.2. She has now filed W.V.M.P.No.2540 of 2003 disputing the very right of the petitioner to construct the ground floor as well as the subsequent first and second floors.

Learned standing counsel for the Municipality has brought to my notice that the appeal filed by the petitioner pursuant to the orders of this Court in W.P.No.2583 of 2002 is still pending and that the Writ Petition is filed on mere apprehension. Disputing the same, learned counsel for the petitioner submits that the appeal is pending on the ground that attempts are being made to demolish the structures already made. Therefore, instead of keeping the Writ Petition pending, it would be

desirable to dispose of the same.

As the appeal is still pending against order dated 26.12.2002 passed under Section 228 (3) of the Act, it would be in the interest of all the parties to direct the Municipal Councilor to pass appropriate orders within a period of eight (8) weeks preferably in the next meeting of the Municipal Council. Whether there is stay or not, as admittedly some construction is made, it would be proper to direct both the parties to obtain *status quo*. It is made clear, if the petitioner constructs any structure and in case the appeal is rejected, the structures made shall be liable for demolition. Insofar as the second respondent is concerned, the title cannot be decided in this Writ Petition and liberty to the parties to avail appropriate remedy elsewhere.

The Writ Petition with the above observations and directions disposed of. Liberty to the second respondent to make a representation to the Municipal Council for being given an opportunity at the time of consideration of appeal to the petitioner.

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(V.V.S.RAO, J)

20th July 2004

RRB

Copies To:

1. The Commissioner, Khapra Municipality, Village Khapra, Ranga Reddy District.
2. Two CD Copies.